

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

HABIB BONAHDARZADEH,

Plaintiff and
Respondent,

v.

MAX KAY,

Defendant and
Appellant.

B284703

(Los Angeles County
Super. Ct. No. PC054756)

APPEAL from judgment of the Superior Court of Los Angeles County, Stephen P. Pfahler, Judge. Affirmed.

Max Kay, in pro. per., for Defendant and Appellant.

Law Office of Benjamin D. Harris and Benjamin D. Harris, for Plaintiff and Respondent.

Defendant and appellant Max Kay appeals from a judgment in favor of plaintiff and respondent Habib Bonakdarzadeh following a bench trial. Appellant contends there was reversible error based on the trial court's failure to provide a statement of decision, irregularities in the proceedings, and extrinsic fraud. Finding no prejudicial error, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Respondent brought to trial four causes of action—fraud, constructive fraud, conspiracy, and unjust enrichment—against appellant and two other individual defendants based on allegations that they harmed respondent in connection with a short sale of respondent's home.¹ The limited record on appeal provided by appellant does not include any detail about respondent's claims against appellant,² other than as set forth in the trial court's

¹ The other two defendants had defaults entered against them prior to trial and are not parties to this appeal. Respondent apparently sued several additional defendants, but those defendants no longer remained in the case at the time of trial.

² Before briefing started, we directed both parties to address whether appellant's failure to provide a reporter's transcript or suitable substitute of the relevant hearings warrants affirmance based on the inadequacy of the record. (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608–610.) Appellant

judgment.³ The judgment indicates that the trial court found against appellant on the causes of action for constructive fraud and unjust enrichment. The judgment states that appellant, acting as an agent and fiduciary of respondent, breached duties and misused authority in connection with the short sale, failed to disclose fully the facts of the transaction, including various property transfers, and did not use the mortgage payments made by respondent for actual loan payments. The judgment also indicates the court found against appellant on the cause of action for unjust enrichment, and that appellant received the benefit of respondent's money to his detriment. The trial court found for appellant on the causes of action for fraud and conspiracy.

On May 26, 2017, appellant filed a request for statement of decision, seeking a statement of the factual and legal underpinnings of the court's decision on the following issues: the evidence supporting the court's decision and its damage award; the legal grounds for each ruling; whether

offered no briefing, and respondent argues that affirmance is required.

³ Respondent's brief does little to clarify the record. In violation of California Rules of Court, rule 8.204(a)(1)(C), respondent offers a summary of appellant's various misdeeds without any record citations. We ignore any factual assertions not supported by citations to the record. (*Jumaane v. City of Los Angeles* (2015) 241 Cal.App.4th 1390, 1406.)

the statute of limitations had expired before respondent filed his claims; and whether respondent's opening statement covered the essential elements for each cause of action. The request for a statement of decision references the trial court having issued its ruling after trial on May 11, 2017, but the record on appeal does not include a May 11, 2017 ruling, nor any reporter's transcripts from the trial or any hearings. Also on May 26, 2017, the trial court received a "[P]roposed Judgment on Court's Decision Following Trial" filed by respondent.

On July 5, 2017, the court entered the judgment in favor of respondent and against appellant on the second and fourth causes of action, for constructive fraud and unjust enrichment, and awarding respondent \$125,000 plus interest against appellant.⁴ No separate statement of decision was filed after appellant's request. Appellant filed his notice of appeal on August 18, 2017.

DISCUSSION

Appellant makes three contentions on appeal: (1) the trial court's failure to provide a statement of decision after

⁴ The judgment also addressed respondent's claims against the two other defendants who had defaulted, finding for respondent against them on all four causes of action, and awarding respondent \$325,000 plus interest in damages against each of those defendants. A notice of entry of judgment was filed on July 20, 2017.

his timely request is reversible error; (2) irregularities in the proceedings require reversal; and (3) the judgment was based on extrinsic fraud. For each of these contentions, we conclude appellant has failed to establish reversible error, and we affirm the judgment.

No showing of prejudice based on absence of a statement of decision

Appellant contends the trial court failed to provide a statement of decision after he made what he characterizes as a timely request on May 26, 2017, and that the failure constituted reversible error. Respondent contends that the court's May 11, 2017 ruling was a statement of decision, and that appellant's request was untimely under Code of Civil Procedure section 632.⁵

Because the record does not contain the court's May 11, 2017 ruling, we are unable to determine whether it was a tentative decision or a statement of decision, a distinction that is directly relevant to whether appellant's request was timely. Section 632 requires a request for a statement of decision to "be made within 10 days after the court announces a tentative decision" However, a court's tentative decision may "[s]tate that it is the court's proposed statement of decision, subject to a party's objection" (Cal. Rules of Court, rule 3.1590(c)(1).) If that happens, a

⁵ All further statutory references are to the Code of Civil Procedure unless otherwise stated.

party has 15 days to serve and file objections. (Cal. Rules of Court, rule 3.1590(g).) If the court's May 11, 2017 ruling was a proposed statement of decision, then it is possible appellant's May 26, 2017 request could be construed as a timely objection.

Even if we assume appellant's request was timely, we reject his argument that the court's failure to provide a statement of decision is reversible error. Appellant relies upon two cases from the 1980's, ignoring the more recent holding in *F.P. v. Monier* (2017) 3 Cal.5th 1099, that a trial court's failure or refusal to issue a statement of decision in response to a timely request is not reversible per se, but rather is subject to harmless error review under article VI, section 13 of the California Constitution. (*Id.* at pp. 1102, 1113–1116.)

Appellant does not provide any factual or legal analysis of whether the court's failure to provide a statement of decision caused sufficient prejudice to warrant reversal. (*Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 685 [“An appellant must affirmatively demonstrate error through reasoned argument, citation to the appellate record, and discussion of legal authority”].) The absence of any discussion of prejudicial error constitutes a waiver of that argument on appeal. (*Gunn v. Mariners Church, Inc.* (2008) 167 Cal.App.4th 206, 217–218 [“It is an established rule of appellate procedure that an appellant must present a factual analysis and legal authority on each point made or

the argument may be deemed waived. [Citations.]’ [Citation.]”.)

No evidence of irregularity

Appellant next contends irregularities in the proceedings require reversal, arguing that the court’s decision to permit respondent’s counsel to substitute in at a late stage in the proceedings was evidence of the court’s bias. Appellant also argues that respondent’s counsel was the judge’s former law clerk, but the record contains no evidence or information to support that claim. Appellant cites to section 657, which authorizes a new trial when an irregularity prevents a party from having a fair trial. (*Sandco American, Inc. v. Notrica* (1990) 216 Cal.App.3d 1495, 1508–1509.) He also cites to cases ordering reversal where there was record evidence that a judge’s preconceived ideas based on stereotypes violated the party’s right to due process. (*Catchpole v. Brannon* (1995) 36 Cal.App.4th 237, 245, disapproved in *People v. Freeman* (2010) 47 Cal.4th 993, 1006–1007, fn. 4 [“Whatever disagreement there may be in our jurisprudence as to the scope of the phrase ‘due process of law,’ there is no dispute that it minimally contemplates the opportunity to be fully and fairly heard before an impartial decisionmaker”].) With nothing more than appellant’s bald assertions that the trial judge was biased against him and nothing in the record to support those assertions, we find no basis for reversal.

No evidence of extrinsic fraud

Finally, appellant contends that the judgment was based on extrinsic fraud, arguing that respondent falsely claimed title when he lacked documents showing title. Again, with no evidence in the record to support appellant's assertion that the judgment was tainted by extrinsic fraud, we reject this contention. (See *City and County of San Francisco v. Cartagena* (1995) 35 Cal.App.4th 1061, 1067 (reliance on false facts at trial is "not a valid ground for setting aside a judgment when the party has been given notice of the action and has had an opportunity to present his case and to protect himself from any mistake or fraud of his adversary but has unreasonably neglected to do so"].)

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to plaintiff and respondent Habib Bonakdarzadeh.

MOOR, J.

WE CONCUR:

RUBIN, P. J.

BAKER, J.